Petition

81-1948

Supreme Court, U.S.
FILED
MAR 3 1982
ALEXANDER L. STEVAS
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

No. _____

GEORGIA KEATING,

Petitioner,

vs.

GLENNA KEATING, individually and as personal representative of the Estate of Warren E. Keating, deceased,

Respondent.

Petition for a Writ of Certiorari to the Supreme Court of the State of Wisconsin

SCOTT ROSS KEATING
Counsel for Petitioner
Of:
EICHBERG, FELDMAN, POSNER & KEATING
Attorneys at Law
20611 Soledad Canyon Road
Canyon Country, California 91351
Telephone: (805) 252-7885

I. QUESTIONS PRESENTED

1. Do the decisions of the courts of the State of Wisconsin, in denying enforcement of a claim against a decedent's estate, amount to a failure to accord full faith and credit in violation of Section 1, Article IV of the United States Constitution, where such claim was based upon a sister state judgment for spousal and child support (entered upon a marital settlement agreement), which claim was allowed by the executor of the estate and the amount of which was stipulated to, although recovery thereon without the assistance of the Wisconsin courts is prevented by fraudulent conveyances (in violation of the Uniform Fraudulent Conveyance Act), fraud and conspiracy?

2. Do the decisions of the courts of the State of Wisconsin, in denying enforcement of a claim against a decedent's estate, amount to a failure to accord due process of

law and equal protection of the laws, in violation of Amendment V and Amendment XIV of the United States Constitution, where such claim was based upon a sister state judgment for spousal and child support (entered upon a marital settlement agreement), which claim was allowed by the executor of the estate and the amount of which was stipulated to, although recovery thereon without the assistance of the Wisconsin courts is prevented by fraudulent conveyances (in violation of the Uniform Fraudulent Conveyance Act), fraud and conspiracy?

3. Does the law of the land interdict the use of interstate flight as a means for avoidance of familial support obligations?

TABLE OF CONTENTS

		Page
I.	Questions Presented	i
II.	Statement Of Jurisdictional Grounds	3
III.	Constitutional Provisions Involved	3
IV.	Statement Of The Case	4
V.	Reasons For Allowing The Writ	19
VI.	Conclusion	27
	Appendix	28

TABLE OF AUTHORITIES

Caldwell v. Caldwell 5 Wis.2d 146 22

League To Save Lake Tahoe v. Tahoe Regional Planning Agency 507 F.2d 517 25

Raley v. League To Save Lake Tahoe 95 S.Ct. 1398, 420 U.S. 974, 43 L.Ed.2d 654 25

Rupp v. Kahn 246 Cal.App.2d 188, 55 Cal.Rptr. 108 22

Von Hoffman v. Quincy 4 Wall. 535, 18 L.Ed. 403 21

Constitutional Provisions

Section 1, Article IV of the United States Constitution 3,21

Amendment XIV of the United States Constitution 3,23

Amendment V of the United States Constitution 4,24

Statutes:

California Civil Code §§ 3439.02, 3439.04 22

United States Code, Title 28, §1257(3) 1

Wisconsin Statutes §§ 705.07(2), 242.02(1) 22

Court Rules:

Rules of the U.S. Supreme Court, Rule 17(c) 24

Reports Below:

None

II. STATEMENT OF JURISDICTIONAL GROUNDS

Petitioner prays that a writ of certiorari issue to review the order denying review by the Supreme Court of the State of Wisconsin, which is dated and was entered on December 7, 1981.

The jurisdiction of this Court is invoked under Section 1257(3) of Title 28 of the United States Code.

III. CONSTITUTIONAL PROVISIONS INVOLVED

A. Section 1, Article IV of the United States Constitution, which reads in relevant part:

> "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state."

B. Amendment XIV of the United States Constitution, which reads in relevant part:

> "... nor shall any State de-

prive any person of... property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

C. Amendment V of the United States Constitution, which reads in relevant part:

"No person shall... be deprived of... property, without the due process of law..."

IV. STATEMENT OF THE CASE

[NOTE: All facts set forth herein are established and contained in the record and transcript of trial on Petitioner's claim in the Circuit Court, Branch 2, Rock County Courthouse Wisconsin, on November 1, 1979.]

A. Identity Of The Parties.

GEORGIA KEATING ("Petitioner" herein) was the first wife of Warren E. Keating,

deceased ("Decedent" herein) and a judgment creditor claimant against the estate of Decedent. GLENNA KEATING ("Respondent" herein) was the second wife of Decedent, and is the executor of his estate.

B. Synopsis Of Facts.

This case arises from a claim brought in the courts of Wisconsin, against the estate of Decedent, a former husband of Petitioner and father of their minor child who, although he earned sufficient income, refused during his lifetime to perform his support obligations under a valid California divorce judgment. There was no dispute in the Wisconsin courts regarding the validity of the California judgment, which had incorporated a marital settlement agreement entered into by the Decedent with the representation of his counsel. Consequently, the probate claim was allowed by the Executor of the Decedent's estate and the amount thereof

was stipulated to, without the necessity of litigation regarding the family support issues.

The Decedent, having left his minor child and former wife without means of support, fled the State of California and thereafter concealed his whereabouts to avoid enforcement of his obligations. During the intervening years, prior to his death, Decedent earned a substantial income but made transfers of his assets, without consideration, while indebted to his former wife for child and spousal support. Also during this time, he conspired and engaged in a continuing scheme to insure the concealment of his whereabouts. His estate, which had taken on the appearance of being depleted (because of the fraudulent transfers), lacked sufficient separate funds to pay the probate claim. Notwithstanding that the probate claim was allowed and stipulated to, the decisions of the Wisconsin courts have failed to set aside

the inter vivos transfers, though they were fraudulent as a matter of law (under the Uniform Fraudulent Conveyance Act).

C. Specific Facts.

Petitioner and Decedent were married on November 7, 1947. There were two children of the marriage. During the marriage, Petitioner served as a wife and mother, receiving no vocational training or education beyond high school.

In May, 1969, Decedent permanently left the family household. Proceedings were thereafter commenced for dissolution of the marriage. Both parties were represented by counsel in the dissolution proceedings which resulted in a marital settlement agreement. That agreement was incorporated into a final decree of dissolution of marriage entered by the California Superior Court for the County of Los Angeles, on February 18, 1970. In conjunction with the decree of divorce, the

Los Angeles Superior Court issued orders requiring Decedent to pay spousal support and child support to Petitioner in the amounts of $600.00 per month and $200.00 per month, respectively.

Thereafter, in or about 1971, the Decedent (then remarried) left the State of California. Decedent refused to disclose his whereabouts to Petitioner and became seriously in arrears in the support obligations he was legally required to pay. Although Petitioner could not afford private investigative services, she made a concerted effort (however fruitless) to locate the Decedent through federal agencies.

During the years 1971 and following, it was necessary for Petitioner to sell the family house in order to provide for herself and the minor child. Petitioner took daytime employment and commenced an education for herself on a nighttime basis. At no time did Petitioner receive welfare or

public assistance of any type. In addition to ordinary support for the minor child, it was necessary during this time for Petitioner to bear extraordinary expenses occasioned by the fact that the minor child suffered from dislexia and required therapy and tutoring. Moreover, the minor child required substantial orthodontia treatments and oral surgery for congenital dental disorders.

During this same period of time, various modifications of the support orders were entered by the Los Angeles Superior Court, which are not germane here by virtue of the fact that Petitioner's claim was adjusted, compromised and stipulated to at trial in the probate proceeding. Of greater importance is the fact that, on February 8, 1971, the Los Angeles Superior Court found Decedent to be in contempt of its support orders. At all times, Decedent was fully able to pay the amounts of support ordered. During the years following his divorce from

Petitioner, until his death, Decedent earned approximately $156,957.00 (exclusive of income earned by his second wife [Respondent] who was also employed).

Decedent died in early 1976. In or about May, 1976, Petitioner duly filed her creditor's claim against Decedent's estate. During the administration of the estate and during pre-trial discovery, it was revealed that Decedent's second wife (Respondent) held assets of Decedent totalling in value approximately $146,475 (consisting of $7,391 in separately-held assets, $34,699 in joint tenancies and $104,385 in life insurance). The compromised amount of Petitioner's claim (exclusive of attorneys fees sought under applicable Wisconsin statute) was $34,454.00. Therefore, Petitioner sought to invoke the power of the Wisconsin trial court to set aside those joint tenancies which were created at a time when Decedent was indebted to Petitioner.

At this juncture, it may be noted that the Los Angeles Superior Court orders also required Decedent to maintain in favor of Petitioner, and in addition to the support obligations, a policy of life insurance (until the child's attainment of the age eighteen). Prior to his death, however, Decedent had designated Respondent (his second wife) as beneficiary of this life insurance policy, in violation of the divorce decrees. Nonetheless, the entitlement to proceeds was compromised and settled between Petitioner and Respondent without judicial action being necessary. The life insurance obligation was thus separately settled and bore no relationship to the claims for child and spousal support.

Hence, the sole claims coming before the Wisconsin trial court involved Petitioner's recovery of the support arrearages. Trial was had on those claims on November 1, 1979. Evidence, both oral and

documentary, proved that Decedent had acknowledged his indebtedness (by correspondence mailed from an alias address) and had overtly and repeatedly refused to abide by the California judgment and the marital settlement agreement. Evidence also proved that Decedent was actually employed and had earned, as noted above, approximately $156,957.00 during the period in question, although he consistently lied to Petitioner, denying that he was employed. Moreover, admissions of Respondent (Decedent's second wife) were also elicited, wherein she acknowledged her own complicity and participation in the conspiracy to conceal Decedent's whereabouts. Among other things, Respondent admitted to having typed a fraudulent letter which was sent to Petitioner, and to carrying on banking transactions, all of which were designed to mislead Petitioner as to Decedent's true residence.

D. The Judicial Proceedings & Decisions.

At trial on Petitioner's probate claim, relief was sought on the following bases:

1. That, as a matter of law, in both Wisconsin and California, the transfer of Decedent's assets into the joint tenancies with Respondent, were subject to being set aside under the provisions of the Uniform Fraudulent Conveyance Act, because Decedent made the transfers without receiving consideration therefor, and he was indebted to Petitioner at the time of the joint tenancy creations.

2. That a constructive trust should be imposed against the joint tenancies, and in favor of Petitioner, based upon the fraudulent transfers, fraud and conspir-

acy practiced upon Petitioner by Decedent and Respondent (his second wife); and

3. That the Respondent was guilty of fraud and conspiracy practiced upon Petitioner and was therefore personally liable to Petitioner for damages.

Contrary to the overwhelming weight of evidence, the Rock County Court issued a judgment on November 14, 1980, in favor of Respondent, with the erroneous finding that Petitioner had failed to prove Respondent's participation in conspiracy or fraud. Even if this finding had been correct (which it was not), the decision was further erroneous in that findings of actual fraud or conspiracy are not requisite to setting aside a conveyance, where joint tenancies are, as a matter of law, fraudulent. Consequently, in failing to set aside the joint tenancies,

while relying on a factual finding that was against the great weight of evidence, the trial court overlooked the body of law which proscribes transfers of the fraudulent type perpetrated by Decedent and his second wife, Respondent.

Petitioner appealed the trial court's decision to the Wisconsin Court of Appeals, District IV, on the following grounds:

> 4. The trial court erred because, in both Wisconsin and California, the transfers of Decedent's assets into the joint tenancies with Respondent, were subject to being set aside under the provisions of the Uniform Fraudulent Conveyance Act, because Decedent was indebted to Petitioner at the time of the joint tenancy creations;
>
> 5. The trial court erred because the clear weight of evidence

established that Respondent was guilty of fraud and conspiracy as against Petitioner and a constructive trust should therefore be imposed as against the joint tenancies in favor of Petitioner; and

6. The trial court erred because Respondent was guilty of fraud and conspiracy, wherefore she should be adjudged personally liable to Petitioner for damages.

The Wisconsin Court of Appeals entered its ruling by written opinion dated August 20, 1981. That opinion, which holds for Respondent, noted that Decedent had in fact defrauded Petitioner and that Petitioner had presented "evidence from which one could reasonably infer that" [Respondent] "conspired with" [Decedent] "to defraud" [Petitioner], but the appellate court declined to disturb the findings of the trial court on the cause of actions for fraud and con-

spiracy.

The affirmance of the trial court decision overlooks the fact that the joint tenancies were created in violation of the Uniform Fraudulent Conveyance Act (adopted in both Wisconsin and California) and the respective State cases interpreting said Act. Petitioner is therefore entitled to recover from the joint tenancies as a matter of law. To this end, Petitioner sought review by the Supreme Court of the State of Wisconsin.

E. Federal Questions Raised In State Supreme Court.

The Petition for Review lodged with the Wisconsin Supreme Court raised the following reasons for review (among others not germane here), which included federal constitutional questions:

1. The appeals court erred in failing to provide Petitioner with

a remedy for the wrongs practiced against her, thereby failing to accord full faith and credit to the judgment of the California court, in violation of the United States Constitution;

2. The appeals court erred in failing to provide Petitioner with a remedy for the wrongs practiced against her, thereby denying her due process of law and equal protection of the laws as required by the United States Constitution;

3. The appeals court erred in failing to impose a constructive trust against the joint tenancies, because, as the appellate court had itself observed, Petitioner had proved her cause of action for fraud as against Decedent;

4. The appeals court erred in failing to reverse the trial

court's finding on the cause of action for fraud against Respondent, because the clear weight and preponderance of evidence supported the finding of fraud.

Notwithstanding the substantial federal questions raised, the Supreme Court of Wisconsin entered its order denying review, from which Petitioner now seeks certiorari of this Court.

V. REASONS FOR ALLOWING THE WRIT

A. The Decisions Of The Wisconsin Courts Violate Section 1, Article IV Of The United States Constitution.

It must be emphasized that this case did not involve litigation of any questions having particular interest to the State of Wisconsin. Nor does this case present family law, support or custody issues. The claim of Petitioner was allowed, compro-

mised and stipulated to. There was no dispute regarding the underlying indebtedness, the sole relief required to be administered by the Wisconsin courts was the setting aside of fraudulently-created joint tenancies.

The effect of the Wisconsin court decisions, in not setting aside the fraudulent transfers made by Decedent during his lifetime, are to leave Petitioner without a remedy that she is entitled to under the California divorce decrees. The essence of the Wisconsin holdings is a refusal to recognize the rights of which Petitioner is vested in both California and Wisconsin, and to leave her without a remedy to which she is entitled in both States. Petitioner's California judgment was based upon a contract (marital settlement agreement). It has been said, of obligations arising under contract, that "[n]othing can be more material to the obligations than the means of enforcement. * * * The ideas of validity and

remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion." Von Hoffman v. Quincy 4 Wall. 535, 18 L.Ed. 403. Yet, in the present case, the Wisconsin courts have separated Petitioner from the logical remedy which would result in enforcement of her claim. If those decisions are left to stand, there will continue to exist a violation of Section 1, Article IV of the United States Constitution which in relevant part provides:

> "Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state."

There are independent State grounds for finding in favor of Petitioner, but there are no such grounds for finding against her. Both Wisconsin and California have adopted the Uniform Fraudulent Conveyance

Act which makes a conveyance or transfer of assets, without consideration, at a time when the transferor is indebted to another, voidable. The case law of both States has recognized that the Act is applicable to divorce cases and such transfers shall not be permitted to defeat the valid claims of former spouses. See Wisconsin Stats. §§ 705.07(2), 242.02(1); California Civil Code §§ 3439.02, 3439.04; Caldwell v. Caldwell 5 Wis.2d 146; Rupp v. Kahn (1966) 246 Cal.App.2d 188, 55 Cal.Rptr. 108.

It was therefore incumbent upon the Wisconsin courts to accord full faith and credit to the California judgment, which has not been done.

B. The Decisions Of The Wisconsin Courts Violate Amendments V and XIV of the United States Constitution.

In denying review of the lower court decisions, the Wisconsin Supreme Court

has left Petitioner deprived of her vested legal rights, based upon patently erroneous conclusions of law and fact. If left to stand, the decisions of the Wisconsin courts would permanently deprive Petitioner of her right to recover, in contravention of the protections guaranteed by Amendment XIV of the United States Constitution which provides in relevant part:

> "... nor shall any State deprive any person of... property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

If left to stand, the decisions of the Wisconsin courts will also deprive Petitioner of her rights to an equal protection of the laws as guaranteed by Amendment V of the United States Constitution which provides in relevant part:

"No person shall... be deprived of... property, without the due process of law..."

Where, as in the present case, a claim is not disputed, and fraudulent conveyances are irrefutable as a matter of law, it becomes readily manifest that the lower courts have failed to accord due process of law and equal protection of the laws in denying enforcement of that claim.

B. The Case Is Ripe For Review And The Federal Questions Are Substantial.

One consideration governing review on certiorari, by this Court, is whether or not "a state court... had decided an important question of federal law which has not been, but should be, settled by this Court..." See Rules Of The Supreme Court Rule 17(c). Precisely this situation exists in the instant case. It is inherently clear that constitutional guarantees of due process, full

faith and credit and equal protection of the laws apply uniformly to all litigants of every class. In failing to apply those guarantees upon a determination of Petitioner's claim, the courts of the State of Wisconsin have decided an important federal question which should be settled by this Court.

It was not necessary for Petitioner to raise federal questions at all levels of the Wisconsin courts. No such requirement exists with respect to certiorari jurisdiction in reviewing state court decisions in this Court. See League to Save Lake Tahoe v. Tahoe Regional Planning Agency (1974) 507 F.2d 517 [certiorari denied]; Raley v. League to Save Lake Tahoe (1974) 95 S.Ct. 1398, 420 U.S. 974, 43 L.Ed.2d 654. Inasmuch as Petitioner did, in fact, raise the substantial federal questions before the Wisconsin Supreme Court, those questions were thereby duly raised.

The law of the land should be clearly expressed to disdain the use of interstate flight as a means for avoidance of familial support obligations. The incidence of this wrong in our society has reached alarming proportions. The wrong perpetrated by Decedent in the instant case is eximious of a larger number of similar wrongs which are pervasive in our society and made possible by the movement between States of parents who are delinquent in their support obligations and family responsibilities.

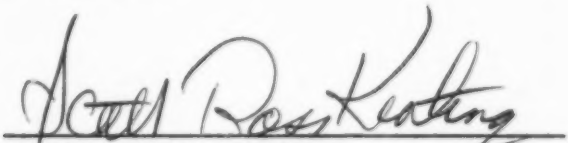
Implicit in the concept of constitutional federalism is the precept that mere boundaries, drawn within the union of individual States, will not be sanctioned as protective barriers for persons seeking to avoid those duties and obligations that are fundamental to all societies of humankind. To this end, there is needed a clear enunciation of the principle that interstate flight, as a means for avoidance of familial support ob-

ligations, is repugnant to the law of our land.

VI. CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

DATED: March 2, 1982.



SCOTT ROSS KEATING
Counsel for Petitioner
Of:
EICHBERG, FELDMAN, POSNER & KEATING
Attorneys at Law
20611 Soledad Canyon Road
Canyon Country, California 91351
Telephone: (805) 252-7885

Office of the Clerk

SUPREME COURT

STATE OF WISCONSIN

Nicholas C. Crapsas
139 W. Wilson St., Suite 200
Madison, WI 53703

Madison, December 7, 1981

James R. Cripe
Nowlan & Mouat
17 N. Franklin St.
P. O. Box 546
Janesville, WI 53545

To

Hon. Floyd H. Guttormson
8113 - 43rd Ave.
Kenosha, WI 53140

The Court today announced an order in your case as follows:

No. 80-2223 Estate of Keating: Georgia Keating v. Glenna Keating

A petition for review pursuant to sec. 808.10, Stats., having been filed on behalf of appellant-petitioner Georgia K. Keating, and considered by the court,

IT IS ORDERED that the petition is denied, with $50 costs.

ABRAHAMSON, J., dissents.

MARILYN L. GRAVES

Clerk of Supreme Court

SC-106

Appendix

81-1948

Supreme Court, U.S.
FILED
MAR 3 1982
ALEXANDER L. STEVAS
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

GEORGIA KEATING,

Petitioner,

vs.

GLENNA KEATING, individually and as personal representative of the Estate of Warren E. Keating, deceased,

Respondent.

Appendix to Petition for a Writ of Certiorari to the Supreme Court of the State of Wisconsin

SCOTT ROSS KEATING
Counsel for Petitioner
Of:
EICHBERG, FELDMAN, POSNER & KEATING
Attorneys at Law
20611 Soledad Canyon Road
Canyon Country, California 91351
Telephone: (805) 252-7885

TABLE OF CONTENTS

		Page
I.	Appendix A - Notice of Order denying review, from Office of the Clerk of the Supreme Court, State of Wisconsin, dated December 7, 1981	1
II.	Appendix B - Decision of the Court of Appeals of the State of Wisconsin, District IV, dated August 20, 1981	2
III.	Appendix C - Decision (after trial) of the Circuit Court for Rock County, State of Wisconsin, Branch 2, filed November 14, 1980	6
IV.	Appendix D - Decision (after hearing on demurrer) of the Circuit Court for Rock County, State of Wisconsin, Branch 2, filed April 24, 1979	8
V.	Certification By Counsel	9

Office of the Clerk

SUPREME COURT

STATE OF WISCONSIN

Nicholas C. Grapsas
139 W. Wilson St., Suite 200
Madison, WI 53703

Madison, December 7, 1981

James R. Cripe
Nowlan & Mouat
17 N. Franklin St.
P. O. Box 546
Janesville, WI 53545

To

Hon. Floyd H. Guttormson
8313 - 43rd Ave.
Kenosha, WI 53140

The Court today announced an order in your case as follows:

No. 80-2223 Estate of Keating: Georgia Keating v. Glenna Keating

A petition for review pursuant to sec. 808.10, Stats., having been filed on behalf of appellant-petitioner Georgia R. Keating, and considered by the court,

IT IS ORDERED that the petition is denied, with $50 costs.

ABRAHAMSON, J., dissents.

MARILYN L. GRAVES

Clerk of Supreme Court

APPENDIX A

SC-106

COURT OF APPEALS
DECISION
DATED AND RELEASED

AUG 20 1981

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals pursuant to s. 808.10 within 30 days hereof, pursuant to Rule 809.62 (1).

NOTICE
This opinion is subject to further editing. If published the official version will appear in the bound volume of The Official Reports.

No. 80-2223

STATE OF WISCONSIN IN COURT OF APPEALS
DISTRICT IV

In the Matter of the Estate of
Warren E. Keating, Deceased:

GEORGIA R. KEATING,

Appellant,

v.

GLENNA KEATING, individually
and as personal representative
of the Estate of Warren E. Keating,
deceased,

Respondent.

APPEAL from a judgment of the circuit court for Rock county: FLOYD H. GUTTORMSEN, Judge. Affirmed.

Before Decker, C.J., Moser, P.J., and Hanley, Reserve Judge.

PER CURIAM. Warren E. and Georgia R. Keating were divorced on February 18, 1970, in California. Georgia was awarded custody of the minor child and Warren was ordered to pay child support and maintenance to Georgia. Less than one month after Warren and Georgia were divorced, Warren married Glenna.

On February 4, 1971, Warren was found in contempt for failing to make his payments as ordered. Four days later the court reduced Warren's total monthly obligation from $800 to $66 because he was not employed. The court ordered Warren to notify Georgia or her attorney when he was employed and the original monthly obligations would be reinstated.

Although Warren was employed from the date of the court's order reducing his obligations until he died on March 6, 1976, Warren never notified Georgia or her attorney that he was reemployed. Warren never told Georgia where he was and used his father's and father-in-law's addresses instead of his own.

When Warren died, Georgia received $47,000 from insurance proceeds on a life insurance policy which the California court had required Warren to keep in effect with Georgia as beneficiary until the minor child reached majority. The life insurance was to assure support of the minor child if, by reason of death, Warren could not.

At the time of Warren's death, the minor child was 16 years old. The arrearages in child support and maintenance

were about $33,000. Warren's estate was valued at about $4,000. Georgia sued Glenna, individually and as personal representative of Warren's estate, for damages resulting from a conspiracy by Warren and Glenna to defraud Georgia of the child support and maintenance Warren was ordered to pay. Georgia contended that the money Glenna received due to joint tenancy with Warren was subject to her claim because of the alleged conspiracy to defraud.

The trial court found that Georgia had failed to prove by a clear preponderance of the evidence that Glenna conspired with Warren to defraud Georgia or to avoid a legal duty. Although the evidence established that Warren defrauded Georgia, the trial court's finding that Georgia failed to prove a conspiracy between Warren and Glenna is not against the great weight and clear preponderance of the evidence. Korb v. Schroedel, 93 Wis.2d 207, 213, 286 N.W.2d 589, 592 (1980). Although Georgia presented evidence from which one could reasonably infer that Glenna conspired with Warren to defraud Georgia, on appeal the court must accept the reasonable inference drawn by the trial court as the trier of fact. Cogswell v. Robertshaw Controls Co., 87 Wis.2d 243, 249-50, 274 N.W.2d 647, 650 (1979).

By the Court.--Judgment affirmed.

Not recommended for publication.

CIRCUIT COURT FOR ROCK COUNTY, WIS. BRANCH NO. 2
FILED
NOV 21 1980
EARL D. YOUNG
REGISTER IN PROBATE

STATE OF WISCONSIN CIRCUIT COURT Branch 2 ROCK COUNTY

In the Matter of the Will of

WARREN E. KEATING,

Deceased.

DECISION

This Court has concluded that the action of Georgia R. Keating to set aside all assets jointly held by the decedent and his wife Glenna Keating and to impose a constructive trust thereon in order to pay the claim of Georgia Keating in full to the amount of $33,454.00 must fail for want of proof to a clear preponderance of the evidence.

The Court has considered all the evidence presented by the plaintiff, and finds that much of it is conjecture, speculation innuendo, and suspicion. Certainly the conduct of Warren Keating and his attitude relative to his responsibilities under the divorce judgment looks suspicious on the surface, but most of the revelation of such conduct arises solely out of alleged telephone conversations between Georgia and Warren during his lifetime, which Warren is not now able to dispute. Georgia apparently never really pursued her claim during Warren's lifetime.

The Court is not satisfied Warren's apparent conduct constitutes a "conveyance" and "intent to defraud his creditors or to avoid any duty." The court does not know whether any of

DUPLICATE-ORIGINAL FILED

Warrens money actually went into the joint bank accounts or if any, how much.

The Court further finds that the evidence needed to prove a conspiracy to commit fraud against Glenna Keating is not present either. Her involvement is so minimal as to be non-existant. Further, if the Court is not persuaded that Warren committed fraud, it could hardly find Glenna a co-conspirator.

Upon the whole record and the evidence, the Court dismisses all claims of Georgia Keating against the joint property in this estate and awards the same in its entirety to the surviving joint tenant, Glenna Keating.

The claim of Georgia Keating against the personal estate of Warren Keating is allowed, to the extent that there are assets to pay the claim or part thereof.

No costs are allowed to either party.

NOV 14 1980

BY THE COURT:

Floyd H. Guttormsen, Judge

STATE OF WISCONSIN BRANCH II, ROCK COUNTY CIRCUIT COURT PROBATE BRANCH

In the Matter of the Estate of

WARREN E. KEATING,

deceased

DECISION ON HEARING OF SEPTEMBER 7, 1978

It is the decision of the Court that the complaint of Georgia R. Keating states sufficient facts to constitute a cause of action, and sufficient facts to warrant a trial on the merits.

Glenna Keating, individually, and as personal representative of the estate of Warren E. Keating, shall have 30 days from the date hereof to serve and file answers on the merits.

Georgia R. Keating shall thereafter have 20 days to serve and file a reply to any new matter contained in such answers.

Upon completion of all pleadings, the matter shall be placed upon the calendar for trial on the merits.

Dated April 24, 1979.

BY THE COURT:

Hon. Floyd H. Guttormsen
Acting Judge

CIRCUIT COURT FOR ROCK COUNTY WIS. BRANCH NO. 2
FILED
APR 24 1979
EARL D. YOUNG
REGISTER IN PROBATE

V. CERTIFICATION BY COUNSEL

The foregoing pages comprise true and accurate copies of all opinions, orders, decisions, findings of fact and conclusions of law known by Petitioner's counsel to have been delivered upon the rendering of all judgments and decrees of all courts whose decisions are sought to be reviewed in the instant matter, and are respectfully submitted in conjunction with the Petition for Writ of Certiorari previously submitted to, and docketed by, this Court.

DATED: April 1, 1982.

SCOTT ROSS KEATING
Counsel for Petitioner
Of:
EICHBERG, FELDMAN, POSNER & KEATING
Attorneys at Law
20611 Soledad Canyon Road
Canyon Country, California 91351
Telephone: (805) 252-7885